

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CONNIE MARIE CAMERON,

Defendant-Appellant.

UNPUBLISHED

October 12, 2006

No. 261847

Saginaw Circuit Court

LC No. 02-022282-FH

Before: Sawyer, P.J., and Wilder and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aggravated stalking, MCL 750.411i(2), and felonious assault, MCL 750.82. She was sentenced to concurrent jail terms of 180 days and 60 months' probation. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to prove beyond a reasonable doubt that she committed a felonious assault. We disagree.

The sufficiency of the evidence to sustain a conviction is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing the sufficiency of the evidence, evidence is reviewed in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Conflicting evidence must be resolved in favor of the prosecution. *Id.* "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

At trial, defendant's former boyfriend testified that defendant drove her SUV up his driveway at about 25 to 30 miles per hour and struck his leg and the side of his hip. A witness testified that, after entering the driveway, defendant did not take any evasive action to keep from striking her former boyfriend, appeared to be aiming for him, and did not try to slow down before striking him. While defendant testified that she did not intend on striking her former boyfriend but only his truck, in considering the sufficiency of the evidence, the credibility of her testimony is properly left for the jury to decide. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Clearly, there is circumstantial evidence that suggests she did, in fact, intend to at the very least place defendant under the immediate apprehension that a battery would result

by an assault with a dangerous weapon, i.e., her vehicle. Therefore, in viewing the evidence in the light most favorable to the prosecution, the jury could have reasonably concluded that there was sufficient evidence to convict defendant of felonious assault beyond a reasonable doubt.

Defendant next argues that there was insufficient evidence to prove beyond a reasonable doubt that she was guilty of aggravated battery. We disagree. “Aggravated stalking consists of the crime of ‘stalking,’ MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2).” *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). “‘Stalking’ means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 750.411i(1)(e). Aggravating circumstances include “[t]he making of 1 or more credible threats against the victim, a member of the victim’s family, or another individual living in the same household as the victim.” MCL 750.411i(2)(C). As used in subsection i(2)(c), a “[c]redible threat” means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.” MCL 750.411i(1)(b).

At trial, defendant’s former boyfriend testified that he filed an initial complaint for stalking because, after asking defendant not to come to his home or to call, defendant repeatedly contacted him. He also testified that he was afraid of defendant. While there was evidence that indicates that he initiated contact with defendant, the jury had an opportunity to draw inferences from the evidence presented at trial. *Hardiman, supra* at 428. In that regard, in viewing the evidence in the light most favorable to the prosecution, the jury could reasonably have concluded from the former boyfriend’s testimony that the initial element of “stalking” was met.

As to the second element involving an aggravated circumstance, at trial, a cell phone message from defendant to her former boyfriend was introduced in which defendant stated,

Well you said I was a Dr. Jekyll and Mr. Hyde, well you want a Mr. Hyde, you’re gonna get it. Now you call me you goddamn bastard, or you will find out how vindictive I can get.

While defendant argues that the message could not reasonably be construed as a “credible threat” under MCL 750.411i(1)(b), a jury could reasonably infer that the message amounted to a credible threat to injure the former boyfriend. *Hardiman, supra* at 428. Additionally, defendant’s former boyfriend testified that he felt threatened by the phone message. Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence of a “credible threat” to convict defendant of aggravated stalking.

Defendant finally argues that her defense counsel’s failure to object to certain testimony during trial concerning the existence of a Personal Protection Order (PPO) against defendant amounts to ineffective assistance of counsel. We disagree. Defendant did not preserve this issue by raising it below in a request for an evidentiary hearing or a motion for new trial. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). Therefore, review of this claim is limited to errors apparent on the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

To establish a claim of ineffective assistance of counsel, a defendant bears a heavy burden. *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Specifically, a defendant must show that counsel's performance was objectively unreasonable and that, but for defense counsel's errors. *Id.* at 600. In addition, there is a strong presumption that defendant's counsel's performance was sound trial strategy. *Id.*

We conclude that defendant has not shown that, even if defense counsel erred in failing to object during trial to testimony referencing the existence of the PPO, there was a reasonable probability that the result of the proceeding would have been different, because evidence of the PPO was relevant to an element of aggravated stalking, MCL 750.411i(2)(a). See *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004) (failure to make a futile objection does not constitute ineffective assistance of counsel).

Affirmed.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto